IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 102 of 1992

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT THROUGH SECRETARY - Appellant(s)
Versus
HITESH VENUDANBHAI SHURU (GADHVI) - Respondent(s)

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Appearance :
MS ASMITA PATEL, AGP for Appellant(s) : 1,
MR BHAVESH P TRIVEDI for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 30/04/2007

ORAL JUDGMENT

This Appeal preferred by the State Government, the defendant in Regular Civil Suit No.901/1995, under Section 100 CPC arises from the judgment and

order dated 8th October, 1991 passed by the learned District Judge, Rajkot (Rural) in Civil Appeal No.77/1988.

The respondents are the heirs and legal representatives of the plaintiff one Venudan Shankerdan Gadhvi, an Armed Police Constable in the State of Gujarat. The plaintiff while serving at Jamkandorna Police Station was alleged to have demanded and accepted illegal gratification in the sum of Rs.700=00 from one Vitthal Laxman and Purshottam Laxman. For the said act of misconduct, a disciplinary proceeding was initiated against the plaintiff. The plaintiff replied to the charge-sheet. According to the plaintiff the said Vitthal Laxman and Purshottam Laxman were involved in case of theft of oil engines. The plaintiff was investigating the said offence. Therefore, the said accused had lodged a false complaint of demanding and accepting illegal gratification against the plaintiff. The said defense put forth by the plaintiff was not accepted by the Inquiry Officer. The Inquiry Officer opined that the imputation of charge made against the plaintiff was

proved. The said report was accepted by the disciplinary authority. The disciplinary authority, by its order dated 21st February, 1983, dismissed the plaintiff from service. The said order was confirmed by the appellate authority on 14th July, 1983 and by the State Government on 19th December, 1984 in Revision Application preferred by the plaintiff.

Feeling aggrieved, the plaintiff instituted Regular Civil Suit No.901/1985 in the Court of Civil Judge (S.D.), Rajkot. The plaintiff challenged the order of dismissal from service made by the disciplinary authority and the orders of the appellate and the revisional authorities. The learned Civil Judge was, by his judgment and order dated 1st January, 1988, pleased to allow the suit and to pass decree in favour of the plaintiff. The defendant was directed to reinstate the plaintiff in service and to treat him continuous in service with all benefits of pay, salary, seniority and all other consequential benefits. Feeling aggrieved, the State Government preferred above referred Civil Appeal No.77/1988 in the Court of District Judge, Rajkot. The learned

District Judge was, by impugned judgment and order, pleased to confirm the findings recorded by the Civil Court, but partially allowed the Appeal in so far as order for past wages was concerned. Therefore, the present Appeal.

The Appeal is admitted to final hearing on the following substantial questions of law:-

(1)Whether in the facts and circumstances of the case, the Courts below have committed an error of law in virtually re-appreciating the evidence and exercising appellate power over the orders passed by the disciplinary authorities ?

(2)Whether in the facts and circumstances of the case, the Courts below have committed an error of law in substituting the punishment and by reducing the quantum of punishment imposed by the departmental authorities ?

The short question that arises in the present Appeal is the scope and jurisdiction of the Civil

Court in interfering the finding of guilt recorded by the disciplinary authority and the punishment imposed upon the delinquent servant.

The learned Civil Judge had held that the disciplinary authority had erred in relying upon the evidence of the complainants, the interested witnesses. In absence of the said evidence, there was no material on record to hold the plaintiff guilty. Besides, the disciplinary authority had also erred in not considering the defense put forth by the plaintiff. Consequently, the learned Civil Judge set-aside the order of punishment imposed upon the plaintiff. The lower appellate Court has proceeded on the same line of reasoning and confirmed the findings recorded by the Civil Court. However, modified the order of the Civil Court to the extent that **“the plaintiff is entitled to suspension allowance as if he is under suspension admissible under the relevant rules for the period from 21st February, 1982 till he is reinstated in service.”**

Ms.Patel has assailed the judgment of the lower

appellate Court. She has submitted that a civil suit in the subject matter was not maintainable. In support of her submissions, she has relied upon the judgments in the matters of **Ramendra Kishore Biswas v/s. State of Tripura and others** [AIR 1999 SC 294]; of **The Rajasthan State Road Transport Corporation and another v/s. Krishna Kant, etc.** [1995(2) GLH 116] and of **Gujarat State Road Transport Corporation v/s. Ravji Tapubhai Goti** [1998(2) GLR 1418].

Be it noted that the judgments relied upon by Ms.Patel are in respect of the workmen who had remedy available under the Industrial Disputes Act, 1947 against their employers. The State being not an industry, the plaintiff could not have availed of the remedy available under the Industrial Disputes Act, 1947. The aforesaid judgments, therefore, shall have no applicability on the facts of the present case.

Ms.Patel has not shown how a civil suit in the subject matter was barred. I am of the opinion that the plaintiff being a Police Officer within the meaning of the Bombay Police Act, he did not have the

alternative remedy either under the Industrial Disputes Act, 1947 or under the Gujarat Civil Services Tribunal Act, 1972. The civil suit in the subject matter was, therefore, maintainable.

Mr.Trivedi has supported the judgment of the lower appellate Court. He has submitted that the finding of guilt recorded against the plaintiff was based on no evidence and the defense put forth by the plaintiff was not considered at all. The Courts below have, therefore, rightly recorded finding in favour of the plaintiff and have rightly decreed the suit. He has further submitted that this being a second appeal, this Court would not interfere with the findings of facts concurrently recorded by both the Courts below. In support of his submission, he has relied upon the judgments of the Hon'ble Supreme Court in the matter of **Narinder Mohan Arya v/s. United India Insurance Co. Limited and others** [AIR 2006 SC 1748] and of **Badridan Bheravadan Gadhavi v/s. State of Gujarat and others** [1985(2) GLR 1280].

I do not agree with Mr.Trivedi. The charge

against the plaintiff was that of demanding and accepting illegal gratification. A proper disciplinary proceeding was conducted against the plaintiff. The plaintiff had been given due opportunity of defense in accordance with the principles of natural justice and the relevant rules. This having been done and the disciplinary authority having considered the misconduct to be grave enough to warrant order of dismissal, should the Civil Court have interfered with the finding of fact recorded by the disciplinary authority. As recorded hereinabove, oblivious of the law that the law of evidence does not apply to the domestic inquiries, both the Courts below proceeded on the premise that the evidence on record was that of the complainants. The complainants being interested witnesses, their evidence ought not to have been believed and the defense put forth by the plaintiff ought to have been believed. The exercise which has been undertaken by the Courts below is that of considering the evidence on record afresh, re-appreciating the same and substituting the finding recorded by the disciplinary authority by its own. This precisely is not permissible. In the matter

of Narinder Mohan Arya (supra) in paragraph 26 of the judgment, the Hon'ble Supreme Court has reiterated this well-settled principle of law and this Court has in the matter of Badridan Beravadan Gadhavi (supra).

In my opinion, the Courts below have committed a grave illegality in considering the evidence on record afresh, in holding that the evidence of the complainants ought not to have been believed and in holding that the defense put forth by the plaintiff ought to have been believed. It should be noted that the defense put forth by the plaintiff was considered by the disciplinary authority but was not acceptable to it. Whether or not to believe a particular evidence is the exclusive jurisdiction of the disciplinary authority. The disciplinary authority having discharged its obligation, the Civil Court has no jurisdiction to interfere with the same and to record finding of its own. The impugned judgment and order of the Court below is contrary to the above settled proposition of law.

For the aforesaid reasons, the Appeal is allowed

with cost. The impugned judgment and order dated 8th October, 1991 passed by the learned District Judge, Rajkot in Civil Appeal No.77/1988 is quashed and set-aside. The Regular Civil Suit No.901/1985 instituted by the plaintiff in the Court of Civil Judge (S.D.), Rajkot is hereby dismissed.

(Ms. R.M.Doshit, J.)

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